

Case Description (/court-case/ayodhya-title-dispute)

# Ayodhya Title Dispute

M Siddiq v. Mahant Suresh Das

## Day 58 Arguments: 4 October 2019

The Supreme Court has now heard final arguments in the appeals to the 2010 Allahabad High Court judgment that divided the Ayodhya title for 36 days. The primary parties are:

- Gopal Singh Visharad (labeled original suit number 1 by High Court): claims the right to worship at the disputed site
- Nirmohi Akhara (original suit number 3): claims shebaitship, which entails management and ownership of the disputed site
- Sunni Waqf Board (original suit number 4): claims ownership of the inner courtyard, where Babri Masjid sat
- Sri Ram Virajman (original suit number 5): claims that the entire site is a divine juristic entity (i.e. not subject to ownership claims).

Yesterday, the Bench comprising Chief Justice Gogoi and Justices Bobde, Chandrachud, Bhushan and Nazeer finished hearing rejoinders by the parties opposed to the Sunni Waqf Board. Today, it resumed hearing Sr. Adv. Rajeev Dhavan for the Sunni Waqf Board. He presented arguments on the Board's suit.

Schedule clarification

On 26 September (<https://www.scobserver.in/court-case/ayodhya-title-dispute/ayodhya-day-53-arguments>), Chief Justice Ranjan Gogoi set the following schedule, to ensure that oral arguments conclude by 18 October:

- By 27 September: Sr. Advs. Meenakshi Arora and Rajeev Dhavan to conclude arguments on pro-temple suits.
- 30 September - 1 October: Counsels for pro-temple parties to present rejoinders
- 2 - 4 October: Sr. Adv. Dhavan to present arguments on Sunni Waqf Board's suit.
- 7 - 11 October: Dussehra vacation
- 14-18 October: unassigned.

Today, Sr. Adv. Dhavan asked whether he could be granted additional time to argue. He said that he would attempt to finish his arguments by 4pm, but that he may require a small amount of additional time on Monday, 14 October after the Dusshera vacation. The Bench indicated it would allow him additional time.

### Replying to other parties

Sr. Adv. Dhavan in-effect began today by once again replying to other suits. Although, he clarified that his arguments were '*not a further reply*' to the other suits. Rather, he said he was abstracting legal principles from their arguments, which also apply to the Sunni Waqf Board's claims [see written submission ([https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/226/A111.\\_Response\\_to\\_Arguments\\_and\\_their\\_Applicability\\_on](https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/226/A111._Response_to_Arguments_and_their_Applicability_on)

#### *7.82 Illegality cannot form the basis of rights claims*

He also returned to his earlier argument that rights cannot be claimed on the basis of illegal acts ('illegality'). In particular, he argued that the Shri Ram Virajman, the Nirmohi Akhara and other Hindu parties were basing their claims of title and adverse possession on illegality. For example, he said that the Nirmohi Akhara's possession claim over the inner courtyard was based on the illegal placement of Ram idols (trespassing) in Babri Masjid in 1949.

#### *7.83 Belief alone cannot establish juristic personality*

Next, Sr. Adv. Dhavan disputed Sr. Adv. Parasaran's assertion that juristic personality can stem from belief alone. Sr. Adv. Parasaran had argued that Ram Janmabhoomi has legal personhood on the basis that worshippers believe the site is divine. Sr. Adv. Dhavan argued that belief is too amorphous of a concept to decide juristic personality. Further, he submitted that case law establishes that belief alone is insufficient.

#### *7.84 Hindu parties must establish exact birth location of Lord Ram*

He responded to Sr. Adv. Vaidyanathan's rejoinder that the precise birthplace of Lord Ram need not be established. Sr. Adv. Dhavan stressed that the Sunni Waqf Board was not disputing that Lord Ram was born in Ayodhya. However, he argued that the Hindu parties must prove the claim that he was born where the central dome of Babri Masjid lies.

#### **Mediation proceedings**

Sr. Adv. Dhavan sought to rely on a statement made during the mediation proceedings. The counsels for Shri Ram Virajman objected, on the ground that the mediation proceedings were confidential. Sr. Adv. Dhavan responded that it was already in the public domain, as the witness giving evidence had released on it on Twitter themselves. Nevertheless, Sr. Adv. Dhavan withdrew his argument.

*The Bench rose at 12.57 PM and re-assembled at 2.18 PM.*

#### *7.85 Sunni Waqf Board's claim for title*

After lunch, Sr. Adv. Dhavan began on the pleadings in the Sunni Waqf Board's suit. He submitted that he would focus on two issues: title and limitation. Today, he only addressed the former.

He began by handing over a compilation of four written submissions (i) a general note ([https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/227/A112.\\_NOTE\\_ON\\_TITLE.pdf](https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/227/A112._NOTE_ON_TITLE.pdf)) on the title issue; (ii) relevant exhibits (<https://scobserver->

production.s3.amazonaws.com/uploads/ckeditor/attachments/228/A113.\_FP\_\_\_Index\_-\_Convenience\_Compilation\_of\_Exhibits\_.pdf) (evidence); (iii) relevant case-law ([https://scobserver-](https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/229/A114._Compilation_of_Cases_on_the_Issue_of_Title.pdf)

production.s3.amazonaws.com/uploads/ckeditor/attachments/229/A114.\_Compilation\_of\_Cases\_on\_the\_Issue\_of\_Title.pdf);

(iv) case-law on the lost grant doctrine ([https://scobserver-](https://scobserver-production.s3.amazonaws.com/uploads/ckeditor/attachments/230/A115._Compilation_of_Judgments_on_Doctrine_of_Lost_Gr)

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#### *7.85.1 Sunnis have historical possession*

First, he sought to establish that historically Sunnis possessed the site since Babur's time. He took the Bench through a British grant issued for the upkeep of Babri Masjid. He submitted that the British Government only issued the grant after conducting a detailed enquiry into the history of the site. Justice Nazeer observed that the grant was only for upkeep and did *not* amount to a title grant. Sr. Adv. Dhavan agreed, but submitted that implicit in a grant of upkeep, is the recognition that there was a mosque at the site.

Justice Chandrachud asked Sr. Adv. Dhavan whether the grant changed the nature of the title, as Babur had initially dedicated the mosque to Allah. Sr. Adv. Dhavan replied that the change in sovereign did *not* change the nature of recognition - namely a mosque existed at the site.

He tried to show Muslim possession of the disputed site, by taking the Bench through several instances where Hindus and Sikhs had allegedly attempted to encroach upon the mosque's land. In particular, he discussed how Hindus had illegally constructed the Ram Chabutra in 1857 during British rule.

#### *7.85.2 Adverse possession claims*

Further, he submitted that no historic legal dispute in relation to the site entailed a specific claim of adverse possession by any party against Muslim possession. Adverse possession entails claiming ownership of land that another party has the title to, by having continuously occupied it.

Sr. Adv. Dhavan clarified the Sunni Waqf Board's own adverse possession claim. He argued that if the court found that Babur had built a mosque in the 1520s on the ruins of a temple, then the Sunnis should be found to be in adverse possession of the site, starting from when Babur constructed the mosque.

#### *7.85.3 1882 suit*

Next, he addressed the 1882 suit, wherein the *Mutawalli* (<https://www.merriam-webster.com/dictionary/mutawalli>) of Babri Masjid was denied his prayer to claim rent from the Mahant using the Ram Chabutra in the outer courtyard. Sr. Adv. Dhavan observed that while the suit was dismissed, there was no challenge to the status of the *Mutawalli* as the keeper of the mosque.

#### *7.85.4 1885 suit*

Following, he addressed the 1885 suit, which denied a Hindu *Mahant* (<https://www.merriam-webster.com/dictionary/mahant>) the right to construct a temple at the Ram Chabutra. He submitted that this was the first time a right was asserted to construct a temple at the disputed site. In addition, he said that even in this suit no claim of adverse possession by the Hindu parties was put forth.

#### *7.85.5 Sunni Waqf Board was never dispossessed*

He argued that the Sunni Waqf Board was never dispossessed of the site prior to it being placed under the custody of the State in December 1949. In particular, he submitted that the December 1949 proceedings did *not* amount to dispossession, but a mere cessation of Muslim prayers for six days, due to court orders.

*The court rose at 4.04 PM.*

(Court reporting by Avinash Amarnath)

**Case Documents**

- 2010 Allahabad High Court Judgment  
(<http://elegalix.allahabadhighcourt.in/elegalix/DisplayAyodhyaBenchLandingPage.do>)

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